82-407

Office - Supreme Court, U.S.
FILED
AUG 23 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No:

October Term, 1982

RICHARD N. KATZMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF PENNSYLVANIA

RICHARD H. MARTIN, ESQ.
BASKIN AND SEARS, P.C.
10th Floor, Frick Bldg.
Pittsburgh, PA 15219
(412) 562-8727

Attorneys for Petitioner,
Richard N. Katzman

THE QUESTIONS PRESENTED FOR REVIEW

Did the court below err in refusing to grant a new trial to defendant Katzman where the only evidence supporting his conviction was seized from his person upon a public street under color of a search warrant that described, in its affidavit of probable cause, only a basis for a search of premises believed to be under his control but contained no basis upon which the issuing authority could conclude that contraband or evidence would be found upon the person of Katzman, and where the record is devoid of any evidence that would otherwise support the search of Katzman upon a public street?

I N D E X

Page

THE QUESTIONS PRESENTED FOR REVIEW ... i

INDEX ii

TABLE OF CITATIONS iii

OPINIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 17

APPENDIX A-1, Judgment Order, Superior Court of Pennsylvania 18

APPENDIX A-2, Opinion, Honorable Ralph J. Cappy, Court of Common Pleas, Allegheny County, Pennsylvania 19

APPENDIX B-1, U.S.C.A. Const. Amend. 4 36

APPENDIX B-2, U.S.C.A. Const. Amend. 14 37

APPENDIX C, Order, Supreme Court of Pennsylvania 41

TABLE OF CITATIONS

	Page
United States v. Bailey, 458 F.2d 408 (9th Cir. 1980)	13
United States v. Flanagan, 423 F.2d 745 (5th Cir. 1970)	13
United States v. Gramlich, 551 F.2d 1359 (5th Cir. 1977)	12
United States v. Rettig, 589 F.2d 418 (9th Cir. 1978)	12
United States v. Ventresca, 380 U.S. 102 (1965)	16
United States v. Whitlow, 339 F.2d 975 (7th Cir. 1964)	13
Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031 (1971)	12

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

No:

RICHARD N. KATZMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Superior Court of Pennsylvania, entered in the above-entitled case on February 5, 1982.

Opinions Below

The judgment order of the Superior Court of Pennsylvania, filed on February 5,

1982, is not yet reported and is reprinted in Appendix A along with the opinion of the Honorable Ralph J. Cappy, Court of Common Pleas of Allegheny County, Pennsylvania, upon which the Superior Court of Pennsylvania relies.

Jurisdiction

The judgment of the Superior Court of Pennsylvania was entered on February 5, 1982. On May 28, 1982, the Supreme Court of Pennsylvania entered an Order Denying Petitioner's Petition for Allowance of Appeal. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Statutes Involved

The Fourth and Fourteenth Amendments to the Constitution of the United States are involved herein and set forth in Appendix B, infra.

Statement of the Case

This criminal prosecution was instituted by the arrest of the petitioner, Richard

Katzman (hereinafter "Katzman"), on October 21, 1979, by various troopers of the Pennsylvania State Police. The arrest was preceded by the attempt by said police officers to execute a search warrant for the person of Katzman. Subsequent to the execution of the search warrant for the person of Katzman and his ensuing arrest, said police officers executed a search warrant for certain premises located at 203 Roup Street, Pittsburgh, Pennsylvania.

The search warrant for the person of Katzman was issued on October 21, 1979, on the basis of an affidavit of probable cause drafted and executed by Trooper Charles G. Wilker and sworn before the issuing authority, Andrew Kurta. The affidavit of probable cause utilized in support of the search warrant for Katzman's person is identical in all respects to that utilized in support of the search warrant issued for the premises

located at 203 Roup Street, Pittsburgh, Pennsylvania.

The thrust of the subject affidavit of probable cause is that Katzman was conducting a telephone bookmaking business at 203 Roup Street, Pittsburgh, Pennsylvania. Said affidavit of probable cause states that, beginning on October 13, 1979 and continuing on October 14, 19, 20 and 21, 1979, surveillance was maintained at Katzman's residence and at 203 Roup Street, during which time Katzman was observed walking on the street and driving his car from his residence to the Roup Street location. The affidavit of probable cause further states that an informant placed bets with Katzman by telephone during the time Katzman was known to be inside the premises on Roup Street.

On October 21, 1979, after having obtained the search warrants for the person

of Katzman and for the premises located at 203 Roup Street, the troopers, dressed in street clothes, stationed themselves across the street from the Roup Street premises and waited for Katzman to exit. At approximately 4:40 PM, Katzman exited the Roup Street premises carrying a folded newspaper under his arm. Nothing unusual was observed by the troopers relative to the newspaper which Katzman carried.

Upon observing Katzman, the troopers announced that they were state police. Thereupon, Katzman began to run, with the troopers in pursuit, until he tripped over a fence and was captured in the rear of property located at 140 S. Negley Avenue. As a result of the chase and the fact that Katzman tripped over a fence, certain papers were observed scattered on the ground and were picked up by the police. After these papers were retrieved and examined, the troopers

determined that the papers consisted of line sheets, sheets containing bets and owe sheets. Thereupon, Katzman was placed under arrest for bookmaking.

Reasons for Granting the Writ

The Superior Court, in affirming without opinion the decision of the Court of Common Pleas of Allegheny County, Criminal Division, decided the question presented for review in a manner not in accord with the applicable decisions of this Court and various United States Courts of Appeals.

Katzman contends that he is entitled to a new trial since the state police had no legal justification for conducting a search of his person upon the public street after he had exited the premises located at 203 Roup Street, Pittsburgh, Pennsylvania. Throughout the proceedings in the Courts below, the Commonwealth has maintained that the search of Katzman's person and subsequent

seizure of documents introduced as evidence at his trial, over defense counsel's objection was conducted pursuant to a valid search warrant for his person.[1/]

Based upon the contentions of the Commonwealth and Katzman, Judge Cappy, at the suppression hearing, correctly determined that the issue before him was whether the

---

1/ At no time during this case has the Commonwealth asserted that the search was incident to a valid arrest or that, apart from those facts stated in the affidavit of probable cause, there was an independent basis for conducting a search of Katzman's person. Clearly, the record in this case would not support such an assertion since Katzman was not observed committing any offense as he exited the Roup Street premises prior to the execution of the search warrant for his person. Since the offense charged in this case, Bookmaking, 18 P.S. § 5514, is a misdemeanor, an arrest was improper unless the arresting officers observed the offense being committed in their presence. Pa.R.Crim.P. 101(a). As the record indicates, the police made no such observation in this case.

search warrant for the person of Katzman was based upon a legally sufficient showing of probable cause, under the Fourth Amendment of the United States Constitution, as incorporated into the Fourteenth Amendment, and Article I, Section 8 of the Pennsylvania Constitution, to justify the search of Katzman on October 21, 1979. After examining each statement of fact set forth in the affidavit of probable cause, Judge Cappy made the following finding:

> "... there can be no doubt that the defendant, Richard Katzman, was involved in a cleverly devised bookmaking operation involving the use of telephone call-forwarding apparatus, that during the period involved herein, Katzman unquestionably received bets by telephone, that Katzman's principle residence was located at 220 S. Negley Avenue, and that on those occasions when bets were placed with Katzman by the informant herein, Katzman was known to be at 203 Roup Street."

Significantly, Judge Cappy did not conclude,

as a result of his line by line analysis of the affidavit of probable cause, that Katzman was likely to be carrying on his person any tangible fruits of the bookmaking operation. Since neither the informant's statements nor the police surveillance, as reflected by the affidavit of probable cause, would enable a magistrate to make a determination that any item of contraband would be found on Katzman's person, Judge Cappy determined that it was reasonable to infer such fact:

> "Common sense dictates but one conclusion, that in view of the surreptitious nature of Katzman's operations, combined with frequent comings and goings of the defendant from the Roup Street location where he was unquestionably receiving bets by phone, the bookmaking paraphernalia was either located at the Roup Street residence or, if removed from the location, removed by the only individual ever seen entering and exiting those premises - - Katzman himself. It would be stretching reality to the point of absurdity to assume that the bets themselves were not recorded but were neatly memorized and secreted in Katzman's mind. (Emphasis supplied)

However, Judge Cappy's inference as to the existence and location of the bookmaking paraphernalia is based on conjecture and surmise. Obviously, Judge Cappy could only surmise, on the basis of the affidavit of probable cause, that the contraband could only have been located in the residence or on the person. No case has suggested that constitutional proscriptions against unreasonable search and seizures were met as long as the location of the suspected contraband was narrowed down to one of several possibilities.

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." [Emphasis added]

This Court has recently reaffirmed the traditional view that the Fourth Amendment was designed to protect the privacy and security of persons and, in so doing, reiterated the principle that

> "In the ordinary case ... a search of private property must be both reasonable and performed pursuant to a properly issued search warrant. The mere reasonableness of a search, assessed in the light of surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment.
>
> * * *
>
> By requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime,' Johnson v. United States, 33 U.S. 10, 14 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948), we minimize the risk of unreasonable assertions of executive authority. See McDonald v. United States, 335 U.S. 451, 455-456, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948)." Arkansas v. Sanders, ___ U.S. ___, 99 S.Ct. 2586, 2589, 2590 (1979).

Thus, the constitutional scheme requires that search warrants be issued only after the police officer or affiant articulates, in an affidavit of probable cause, his reasons for wanting to conduct a search and supports what is said by a sworn oath. Thereupon, the statements in support of probable cause are considered by a neutral and detached magistrate. See e.g., Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031 (1971).

In addition to the warrant procedures specified above, the federal cases are unanimous in holding that probable cause is not established if the affidavit of probable cause fails to establish, by the recital of underlying facts and circumstances, that the fruits of a crime or evidence thereof will be found at the place to be searched. See e.g., United States v. Rettig, 489 F.2d 418, 422-432 (9th Cir. 1978); United States v. Gramlich, 551 F.2d 1359, 1362 (5th Cir.

1977); United States v. Bailey, 458 F.2d 408 (9th Cir. 1972); United States v. Flanagen, 423 F.2d 745 (5th Cir. 1970); United States v. Whitlow, 339 F.2d 975, 980 (7th Cir. 1964).

Based upon the foregoing analysis and authorities, it is clear that the search warrant for the person of Katzman is legally insufficient and requires suppression of the items seized. First, it is obvious from a reading of the affidavit of probable cause that the police affiant informed the issuing authority only that a telephone bookmaking business was being conducted at 203 Roup Street. No underlying facts or circumstances suggesting that any item of contraband or evidence would be found on the person of Katzman were described in the affidavit of probable cause or presented to the issuing authority. If anything, the affidavit of probable cause negated that inference by the following recitals:

(1) The affidavit recites that informant's information to the police merely indicate that bets were being placed over the telephone, but did not state that said bets were being recorded on rice paper or in any other form;

(2) The affidavit recites that affiant has known that Katzman was involved in bookmaking for a period of six years and, on one occasion was the subject of a search, but does not state that said search revealed the existence of rice paper, line sheets or any other paraphernalia common to a bookmaking business;

(3) The affidavit recites that the police conducted surveillance of Katzman on October 14, 19, 20 and 21, 1979, but does not state that on any of those occasions he was observed carrying anything on his person such as rice paper, line sheets, owe sheets or any other paraphernalia common to a bookmaking business;

(4) The affidavit, based on the aforesaid recitals, concludes that Katzman was conducting the telephone bookmaking operation from inside the premises at 203 Roup Street.

Applying the analysis set forth above, the United States Court of Appeals, Sixth Circuit, recently ordered that a firearm be suppressed as evidence where it was seized pursuant to a search warrant whose affidavit of probable cause failed to specify any information relating to the existence or location of the firearm. In its opinion on rehearing, the Court of Appeals states:

> "In our previous opinion we found that the warrant authorizing a search for firearms was valid. We were under the impression that the affidavit attached to the search warrant provided for probable cause for the search for the firearm. Upon rehearing and review of this question, we now find that the affidavit upon which the warrant was granted made no mention of any facts about firearms. The affidavit cannot be read as attempting to provide probable cause for the

> search for a firearm. In addition, there is no indication from the record or the briefs on rehearing that the officers seeking the warrant brought any information concerning existence or location of a firearm to the attention of the magistrate who issued the warrant. The lack of probable cause in the affidavit vitiates the search and seizure for the firearm unless the search comes within an exception to the warrant requirement." United States v. Andrews, 612 F. 2d 235 (6th Cir. 1980) (Emphasis supplied)

Under the foregoing circumstances, the issuing authority, even if applying the common sense approach of United States v. Ventresca, 380 U.S. 102, 198 (1965), could not make a finding that a search of Katzman's person would yield anything whatsoever. For him to have done so was improper under the -cited cases and requires suppression of said evidence.

Conclusion

Based on the foregoing and the record as a whole, it is respectfully requested that a Writ of Certiorari to the Superior Court of Pennsylvania be issued for the special and important reasons stated herein.

Respectfully submitted,

RICHARD H. MARTIN
BASKIN AND SEARS, P.C.

10th Floor, Frick Bldg.
Pittsburgh, PA 15219
(412) 562-8727

Attorneys for Petitioner,
Richard N. Katzman

APPENDIX A-1

J. 1684/81

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	:	
RICHARD N. KATZMAN, Appellant	:	No. 1232 Pittsburgh, 1980

Appeal from the Judgment of Sentence of the Court of Common Pleas, Allegheny County, Criminal Division, at No. CC7906289A.

BEFORE: CAVANAUGH, MONTEMURO and VAN DER VOORT, JJ

PER CURIAM: FILED: FEBRUARY 5, 1982

Judgment of sentence affirmed on the opinion by the Honorable Ralph J. Cappy, Court of Common Pleas, Allegheny County.

APPENDIX A-2

O P I N I O N

CAPPY, J.

This matter came before the Court for hearing and disposition of defendant Richard Katzman's post-verdict motions which were filed following a bench trial which resulted in his conviction on two counts of poolselling and bookmaking. There follows a statement of our reasons for denying the requested relief.

From the credible evidence, the following facts are apparent. On October 21, 1979, Pennsylvania State Police Officers were issued a search warrant to search the person of defendant Richard Katzman, on the basis of the affidavit of probable cause attached hereto. Later that day, five troopers took up surveillance at a point near 203 Roup

Street where the defendant had been repeatedly observed coming and going at odd hours since October 13, when police first initiated surveillance of defendant. At 4:40 PM as the defendant exited from the front door, carrying a newspaper under his arm, the troopers approached the defendant, identified themselves and announced that they had a search warrant. The defendant then darted away, and a chase ensued. While running, defendant dropped several papers contained in the newspaper he was carrying. As the defendant attempted to hurdle a fence about a block away, he fell into a yard below and was apprehended, dropping the newspaper and four sheets of listed sports bets which were confiscated by the troopers. At 4:45 PM the defendant was served with the search warrant and was placed under arrest for poolselling and bookmaking and was immediately advised

of his Miranda rights. In addition to the sheet listing sports bets and the newspaper, $545.00 in cash and a line sheet was confiscated.

The defendant first argues that the suppression court erred in denying his motion for suppression of all evidence seized from his person at or about the time of his arrest. The crux of defendant's contention is that, "there were no underlying facts or circumstances suggesting that any item of contraband or evidence would be found on the person of Katzman."[1] The defendant argues that nothing in the affidavit of probable cause underlying the search warrant for Katzman's

---

1 See brief in support of Motion for New Trial and In Arrest of Judgment filed on behalf of Richard Katzman, defendant, at page 10.

person indicated that bets placed over the telephone were being recorded, that Katzman was never observed carrying rice paper, line sheets, or other bookmaking paraphernalia when entering or exiting 203 Roup Street, and that while the defendant was at one time the object of a search for bookmaking paraphernalia, said search failed to reveal the existence of rice paper, line sheets or any other bookmaking paraphernalia. Simply stated, defendant argues that the facts contained in the affidavit of probable cause could not sustain a conclusion "that a search of Katzman's person would yield anything whatsoever."[2] (Defendant's brief, page 12)

---

2 It should be noted that the suppression court ruled that the search warrant and attached affidavit of probable cause for the premises located at 203 Roup

(Continued on next page)

Appendix A-2 Opinion

The standard by which we are guided in examining the affidavit underlying a search warrant is well stated in Commonwealth v. Shaw, 444 Pa. 110, 281 A.2d 897 (1971):

> "In order for the issuance of a search warrant to be constitutionally valid, the issuing officer must reach the conclusion that probable cause exists at the time he issues the warrant." Commonwealth v. Nycz, ___ Pa.Super. ___, 418 A.2d 418 (1979); Furthermore, "the probable cause standard concerns only the possibilities, and not a prima facie showing of criminal activities, and probable cause

---

2 (Cont'd)

Street lacked sufficiently detailed information to sustain a valid search of those premises, as 203 Roup Street is a multi-dwelling unit, and the affidavit failed to specify with sufficient particularity the area within the dwelling which was to be the object of search. As such, defendant's motion to suppress evidence seized as the result of the search of 203 Roup Street was granted.

exists when the facts and circumstances set forth in the affidavit are sufficient to warrant a person of reasonable caution to believe that the contraband to be seized is in the specific place described." Commonwealth v. Stamps, 260 Pa.Super. 108, 393 A.2d 1035 (1978); Commonwealth v. Passarelli, ___ Pa. Super. ___, 418 A.2d 485 (1980); Commonwealth v. Nycz, Supra.

It should also be emphasized that:

"Affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial. McCray v. Illinois, 386 U.S. 300, 311, 87 S.Ct. 1056 18 L.Ed.2d 62 (1967); Commonwealth v. Nycz, Supra. at 422; that in judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense, United States v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741, 13 L. Ed.2d 684 (1965); (Nycz, Supra); and that their determination of probable cause should be paid great deference by reviewing courts. Jones v. United States,

Appendix A-2 Opinion

362 U.S. 257, 270-271, 80 S. Ct. 725, 4 L.Ed.2d 697 (1960). (Nycz, supra)

An examination of the affidavit of probable cause in the instant case reveals the following:

A. The affiant received information from a reliable confidential informant, (see attached affidavit) that he was placing football bets with one Richard Katzman at specified phone numbers beginning on September 8, 1979.

B. The informant stated that Katzman informed him that he was using call forwarding devices to thwart police efforts to find him.

C. The affiant was in the presence of the informant on September 8, 1979 when he dialed the specified phone number and placed a series of bets with a person he knew to be Richard Katzman.

D. The affiant contacted the informant on each weekend from September 8, 1979 until October 21, 1979 on which date the search warrant for Katzman's person was obtained.

E. The Bell Telephone Company was contacted with regard to the specified phone numbers obtained from the informant and it was verified that although

neither phone was registered in the name of the defendant, both numbers had call forwarding capabilities.

F. Surveillance was conducted at the residence of the individual to whom said phone numbers were actually registered, and during that surveillance the defendant was not found to be at that residence during any time when football or baseball bets were taken.

G. That beginning on October 13, 1979 the affiant maintained surveillance at the residence of Richard Katzman. On that day Katzman was observed leaving the residence in the 1979 Burgandy Lincoln bearing Pennsylvania registration number 01891X, registered to Foss Rentals in Murraysville, PA. The defendant was followed to the intersection of South Fairmont and Coral Avenues, where he parked his car and walked to 203 Roup Street, where he entered via the front door. On that occasion surveillance was maintained from approximately 11:00 AM until 1:00 PM. Katzman was not observed leaving the premises and further contact with the informant on that day revealed that bets had been placed by the informant with Katzman during the period of time he was observed at 203 Roup Street.

H. Surveillance was again maintained at 203 Roup Street on October 14, 1979. Again Katzman parked his car on South

Fairmont Street and walked to 203 Roup Street where he entered at approximately 11:17 AM.

I. On October 19, 1979 Katzman's car was again parked on South Fairmont. Surveillance was maintained between 5:30 PM and 8:00 PM after which Katzman left the building. Again on that date the informant revealed that he had received "line information" from Katzman over the telephone during the period of surveillance.

J. On October 20, 1979 Katzman was observed entering 203 Roup Street at 11:30 AM and when surveillance terminated at 2:00 PM Katzman still remained inside 203 Roup Street. On October 21, 1979 Katzman was observed parking his car in the 100 block of Roup Street at approximately 11:17 AM. Again he entered 203 Roup Street. The informant was contacted on this date and informed the affiant that he placed bets with Katzman over the specified phone number shortly after 12:00 Noon.

K. Katzman never parked his car directly in front of the residence at 203 Roup Street, although parking was always available in front of that location.

L. The affiant herein had personal knowledge that the defendant, over a period of approximately six years, was involved in bookmaking operations

both in the City of Pittsburgh and in the suburbs.

Based on the foregoing affidavit, there can be no doubt that the defendant, Richard Katzman, was involved in a cleverly devised bookmaking operation involving the use of telephone call-forwarding apparatus, that during the period involved herein, Katzman unquestionably received bets by telephone, that Katzman's principle residence was located at 220 South Negley Avenue, and that on those occasions when bets were placed with Katzman by the informant herein, Katzman was known to be at 203 Roup Street.

The final question to be determined herein is whether or not it was reasonable to infer that tangible evidence in the form of rice paper, line sheets or other bookmaking paraphernalia was employed by Katzman in furtherance of his bookmaking activities.

Appendix A-2 Opinion

Defense counsel argues that because such paraphernalia was never actually observed prior to Katzman's arrest, there is no reason to believe that any item of contraband would be found on Katzman's person. Common sense dictates but one conclusion; that in view of the surreptitious nature of Katzman's operations, combined with the frequent comings and goings of the defendant from the Roup Street location where he was unquestionably receiving bets by phone, the bookmaking paraphernalia was either located at the Roup Street residence or, if removed from that location, removed by the only individual ever seen entering and exiting those premises - Katzman himself. It would be stretching reality to the point of absurdity to assume that the bets themselves were not recorded but were neatly memorized and secreted in Katzman's mind. Yet, the

defense would have us reach this conclusion, even in view of the defendant's flight when confronted with a valid search warrant by police officers.

It is, therefore, this Court's conclusion that there was probable cause to issue search warrants of both the premises located at 203 Roup Street and of Katzman's person.[3]

---

2 This Court has no doubt that Roup Street address was being used by Katzman to further his illicit bookmaking activities. However, as previously noted, the search warrant for Roup Street and the evidence seized therefrom was suppressed not because of insufficient probable cause to believe that said activity was being conducted at that location, but because of the line of cases requiring specificity when searching multi-dwelling units. Commonwealth v. Yucknevage, ___ Pa.Super. ___ 390 A.2d 225 (1978).

This conclusion is predicated on the premise that when a magistrate has found probable cause to issue a search warrant, the reviewing Court should not invalidate that warrant by interpreting the affidavit in a hyper-technical, rather than common sense manner. The affidavit must be read in a realistic fashion free of technical nitpicking. Commonwealth v. Nycz, Supra. Commonwealth v. Millard, ___ Pa.Super. ___, 417 A.2d 1171 (1979).

This Court must test and interpret the affidavit in a realistic light and the resolution of doubtful or marginal cases should be largely determined by the preference to be accorded to the warrant. Nycz, Supra. Commonwealth v. Matthews, 446 Pa. 652, 85 A.2d 510 (1971); Commonwealth v. Forster, 253 Pa.Super. 433, 385 A.2d 416 (1978).

As stated in the Pennsylvania Superior Court in the closely analogous case of

Appendix A-2 Opinion

Commonwealth v. Nycz, Supra:

> "Bearing in mind that a determination of probable cause by the issuing authority is entitled to great deference by the reviewing court, and finally, that when we examine the affidavit we must understand that we deal only with probabilities that are not technical but are rather the factual and practical considerations of every day life on which reasonable and prudent men, not legal technicians act ... we find that the conduct of (the defendant) ... as observed by the affiant and included in the affidavit, was entirely consistent with that of one engaged in bookmaking ... We, therefore, find that the search warrant was based upon an affidavit which provided more than reasonable grounds to believe that the defendant was engaged in criminal activity and that a search of his person ... would uncover the trappings of his nefarious trade."[4]

---

[4] Further, since the defendant fled in the face of a valid search warrant, any contraband which may have been dropped or abandoned in his flight was properly seized and therefore properly admitted at trial. Commonwealth v. Hall, 240 Pa.Super. 89, 367 A.2d 724 (1979).

Appendix A-2 Opinion

Defendant finally contends that the verdict is against the weight of the credible evidence and is contrary to the applicable law. The evidence in this case raised a question of credibility which the court, in accepting the testimony of the state troopers, resolved in favor of the prosecution.[5] Further, the evidence, viewed in the light most favorable to the Commonwealth and accepting as true all evidence and reasonable inferences therefrom, was unquestionably sufficient to convict the defendant of the crimes with which he was charged. Davis, Supra.

We find the verdict to be fully supported by the evidence, and in the absence

---

5 Credibility determinations are the sole province of the fact finder, Commonwealth v. Davis, ___ Pa. ___, 421 A.2d 179 (1980).

of meritorious reasons to the contrary must conclude that the motions for a new trial and in arrest of judgment were properly denied.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
vs.	)	No: CC7906289A
	)	
RICHARD KATZMAN	)	

ORDER OF COURT

AND NOW, to-wit, this 7th day of January, 1981, after hearing in open court and careful consideration thereof, it is hereby

ORDERED ADJUDGED and DECREED that the post-verdict motions which were filed by the defendant are hereby denied.

BY THE COURT:

/s/ Cappy, J.

/s/ Joseph H. Ridge

APPENDIX B-1

U.S.C.A. Const. Amend. 4

AMENDMENT IV - SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B-2

U.S.C.A. Const. Amend. 14

CONSTITUTION

AMENDMENT XIV.-CITIZENSHIP; PRIVILEGES AND IMMUNITIES: DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according

to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of

President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as of officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any

debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX C

IN THE
SUPREME COURT OF PENNSYLVANIA

Western District

No: 59 W.D. ALLOCATUR DOCKET 1982

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

vs.

RICHARD KATZMAN,

Petitioner.

PETITION FOR ALLOWANCE OF APPEAL
FROM ORDER OF THE SUPERIOR COURT
AT NO. 1232 PITTSBURGH 1980

RICHARD H. MARTIN, ESQUIRE
BASKIN AND SEARS, P.C.
Attorneys for Petitioner

10th Floor, Frick Bldg.
Pittsburgh, PA 15219
(412) 562-8727

"Petition for Allowance of
Appeal Denied Per Curiam
5/18/82"

Entered 5/28/82